

REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the remarks herewith, which place the application into condition for allowance. The Examiner is thanked for considering claims 23 and 24 to be allowable and for removing the rejection under 35 U.S.C. 103(a) of claims 13-15, 18, 20-22,25 and 26 over Ruegg (US 2001/0044382).

Pursuant to the provisions of 37 C.F.R. §§ 1.17(a) and 1.136(a), Applicants petition the Assistant Commissioner to extend the time period for Applicants to respond to the outstanding Office Action by three (3) months, i.e., up to and including June 15, 2004. A check for \$950.00 is enclosed with this paper. Applicants authorize the Assistant Commissioner to charge any additional fee for consideration of this paper, or credit any overpayment, to Deposit Account No. 50-0320.

The invention provides for, *inter alia*, synergistic herbicidal compositions comprising broad spectrum herbicides such as phosphonate derivatives, for example glyphosate, and phosphinate derivatives, for example glyphosinate, and a secondary herbicide for controlling harmful plants in tolerant or resistant cotton crops.

Claims 13, 15, 18, 20, 21, 25 and 26 were rejected under 35 U.S.C. 102(e) as allegedly being anticipated by Ruegg et al. (U.S 6,180,563, "Ruegg'563"). Applicants disagree. Ruegg'563 neither teaches nor enables each and every element of the claimed invention. Contrary to the Examiner's belief, Ruegg'563 does not disclose a herbicidal composition comprising glufosinate plus pyriithiobac-sodium. Applicants assert instead that, at most, Ruegg'563 arguably provides for either compounds of formula(I) plus glyfosinate or compounds

of formula(I) plus pyriithiobac-sodium. Thus, the combination of glyfosinate plus pyriithiobac-sodium, without compounds of formula(I), are not described in Ruegg'563.

Consequently, reconsideration and withdrawal of the Section 102 rejections are respectfully requested.

Further, claims 27 and 28 are rejected under 33 U.S.C. 103(a) as allegedly being unpatentable over the combined teachings of Ruegg et al. (U.S. 6,180,563, "Ruegg '563") and Ruegg et al. (U.S. 5,965,486, "Ruegg'486"), and claims 13-15, 18, 20-22, 25 and 26 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over the combined teachings of Ruegg et al. (U.S. 5,965,486, "Ruegg'486") and Tymonko et al. (U.S. 4,822,401, "Tymonko").

Since Ruegg'563 and Ruegg'486 taken alone or in any fair combination do not suggest the instantly claimed herbicidal composition for weed control in tolerant or resistant cotton crops, Applicants urge that the rejection does not establish a *prima facie* case of obviousness and should be removed. Similarly, since Ruegg'486 and Tymonko taken alone or in any fair combination do not suggest the instantly claimed herbicidal composition for weed control in tolerant or resistant cotton crops, Applicants urge that the rejection does not establish a *prima facie* case of obviousness and should be removed. Finally, even if it were held that the *prima facie* case of obviousness was established, a point Applicants do not concede, Applicants urge that Ruegg'563 and Ruegg'486 and, similarly, Ruegg'486 and Tymonko taken alone or in any fair combination do not suggest that the instant herbicidal compositions exhibit unexpected synergistic results for weed control in tolerant and resistant cotton crops and, therefore, the rejection should be removed.

The Office Action states that "Ruegg teaches a method of controlling the growth of weeds in cotton crop comprising applying to cotton plants a herbicide composition comprising

glyphosate plus pyriproxyfen-sodium” (Office Action at page 3). The Office Action further contends that “Ruegg teaches a method of applying the composition pre-or post-emergently to cotton plants” Id. Applicants respectfully disagree and urge that the herbicidal composition described in Ruegg’563 requires the compound of formula (I) which belongs to the chemical class of pyridylsulfonyl ureas. In contrast, the instant herbicidal composition advantageously does not require this compound for herbicidal action of the composition. The Examiner cannot pick and choose portions of documents in order to formulate an obviousness rejection.

Further, the Office Action states that “Ruegg (US’563) teaches all that is recited by claims 27 and 28 except for the invention comprising the ammonium salt of glufosinate. See 35 USC 102(e) rejection. However, Ruegg (US’486) teaches a method of controlling weed growth in cotton plants comprising applying a composition comprising glyphosate-ammonium to the crop.”Id. The Office Action further states that “it would have been obvious to one having ordinary skill in the art to modify the invention of Ruegg (US’563) to include the glufosinate-ammonium taught by Ruegg (US’486.)” Id.

Applicants respectfully disagree and urge that Ruegg’563 does not teach or suggest the herbicidal composition recited in claims 27 and 28. Ruegg’563 relates to a compound of formula (I), which belongs to the chemical class of pyridylsulfonyl ureas, to be an essential component of the composition. Hence, Ruegg’563 does not disclose, *inter alia*, the instant herbicidal composition.

Ruegg’486 does not correct for this deficiency since it relates to herbicidal compositions that include fluthiacet-methyl, a compound which is not a part of the instant herbicidal composition. Thus, Ruegg’486 does not correct the deficiencies found with Ruegg’563 or vice-versa and the rejection does not establish a *prima facie* case of obviousness.

Moreover, even if Ruegg'563 and Ruegg'486 suggested the instant herbicidal compositions to one skilled in the art, it would still not be possible to extrapolate from these documents that the instant herbicidal compositions exhibit synergistic effects in controlling harmful plants in tolerant or resistant cotton crops.

Finally, the Office Action states that "Ruegg (US'486) teaches a method of controlling the growth of weeds in cotton crop comprising applying to cotton plants a herbicide composition comprising glufosinate-ammonium plus a compound of formula I" Id at page 4. The Office Action further states that "Ruegg does not teach the invention comprising clomazone. However, Tymonko teaches a method of controlling the growth of weeds in cotton crop comprising applying to cotton plants a herbicide composition comprising clomazone plus organophosphorus pesticide. Id at page 4. Finally, the Office Action contends that it would be obvious to one skilled in the art to combine Ruegg'486 and Tymonko to "develop the most effective invention for controlling weed growth in cotton plants".

Applicants respectfully disagree. Ruegg'486 does not teach or suggest the instantly claimed herbicidal composition. Ruegg'486 requires fluthiacet-methyl. The instant invention, by contrast, does not.

Tymonko does not correct for this deficiency. Tymonko relates to a method for controlling weeds in various crops, such as cotton, by using clomazone and an antidote/safener. Tymonko also relates to organophosphorus compounds.

Applicants urge that the organophosphorus pesticides described in Tymonko belong to a class of insecticides, whereas the organophosphorus compounds of the instant invention, such as glyphosinate and glyphosate, belong to a class of herbicides. Moreover, insecticidal organophosphorus compounds described in Tymonko are phosphoric acid derivatives, whereas the

herbicidal organophosphorus compounds of the instant application are phosphinate derivatives (glufosinate) and phosphonate derivatives (glyphosate). Thus, a skilled artisan would not be motivated to combine the cited documents in order to practice the instant invention.

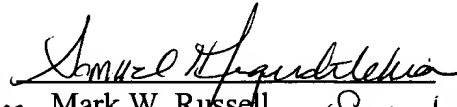
Moreover, even if the rejection somehow did establish a *prima facie* case of obviousness, a point the Applicants do not concede, it should be noted that the inventive combination exhibits synergistic properties and the specification provides evidence to support this position beginning on page 4. In addition, the data presented in Example 5 of the application (page 33) clearly demonstrate superior synergistic activity of instant compositions. Accordingly, it is respectfully suggested that one skilled in the art would not have expected from the combined teachings of Ruegg'653 and Ruegg'486, or the combined teachings of Ruegg'486 and Tymonko, that combinations according to the present invention would exhibit superior synergistic effects.

Consequently, reconsideration and withdrawal of the Section 103 rejections are respectfully requested.

Accordingly, in view of the foregoing, reconsideration of all rejections in this application is requested and favorable action is solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorney for Applicants

By: 
for Mark W. Russell Samuel H. Megarditchian
Reg. No. 37,514 Reg. No. 45,678
(212) 588-0800